IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 07-04-2006

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

THE HONOURABLE MR.JUSTICE AR.RAMALINGAM

AND

THE HONOURABLE MS.JUSTICE K.SUGUNA

C.R.P.No.3092 OF 1996

M/s.Sakthi & Co.,
through its Partner Veeranan.... Petitioner/Respondent

-vs-

Shree Desigachary ... Respondent/Petitioner

Revision against the judgment dated 30.07.1996 made in R.C.A.No.136 of 1994 on the file of Rent Control Appellate Authority-cum-Principal Subordinate Judge, Madurai, as against the order dated 30.09.1994 made in R.C.O.P.No.131 of 1993 on the file of Rent Controller-cum-District Munsif, Madurai.

For petitioner : Mr.V.Sitharanjandas
For respondent :Mr.M.V.Venkataseshan

JUDGMENT

Which is the criterion that has to be taken into account by the Rent Controller for fixing the fair rent i.e., whether the guideline value, as contained in the revenue records, or, the market value, as per the sale deeds executed at the relevant point of time ?

The above is the question, posed before this Full Bench.

2. Facts :

"(i) The landlord, respondent herein, filed a petition, namely, R.C.O.P.No.131 of 1993 before the Rent Controller under Section 4 of the Tamil Nadu Buildings (Lease & Rent Control) Act,1960, for fixing the fair rent at the rate of Rs.5,850/- per month, on the ground that the contractual rent of Rs.425/- per month is not sufficient.

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(ii) The tenant, petitioner herein, resisted the said petition, contending that the contractual rent of Rs.425/- per month itself is sufficient and the claim of the landlord for fixing the fair rent at Rs.5,850/- per month is on the higher side.

(iii) The Rent Controller, during the course of trial, called for the guideline value from the Sub-Registrar's Office and the valuation register from the Municipality, and, on the basis of the reports of the Advocate Commissioner and the Chartered Engineer and also taking the guideline value at Rs.250/- per square feet, fixed the fair rent at the rate of Rs.2,642/- per month.

(iv) The tenant/petitioner, challenging the said fixation of fair rent, filed R.C.A.No.136 of 1994 before the Rent Control Appellate Authority.

(v) After hearing the counsel for the parties, the Rent Control Appellate Authority, by the judgment dated 30.07.1996, dismissed the appeal, confirming the findings of the Rent Controller and fixing the fair rent at Rs.2,642/- per month.

(vi) Assailing the orders of both the Rent Controller and the Rent Control Appellate Authority, this Civil Revision Petition has been filed by the petitioner/tenant before this Court."

3. The main point, that has been urged before Justice K.P.Sivasubramaniam, a learned single Judge of this Court (as he then was), by the learned counsel for the petitioner/tenant, is, that the authorities below should not have accepted the guideline value, maintained by the Sub-Registrar's Office, or, the valuation register, maintained by the Municipality, as the basis for fixation of fair rent, and they should have fixed the fair rent only on the basis of the market value of the land, considering the sale deeds executed by the parties, with reference to the land situated in the area, at the relevant point of time.

4. On the other hand, learned counsel for the respondent/landlord, in justification of the orders impugned, brought to the notice of the learned single Judge a decision reported in 1995 T.L.N.J.226 (N.Sulaiman v. R.Ravichandran), rendered by Justice M.Srinivasan (as he then was), wherein it was held that the guideline value could be taken as the basis for fixation of land value.

5. On the side of tenant, a decision reported in 1997 (3) LAW WEEKLY 193 (Srinivasa Gounder v. K.Venkatesan), rendered by Justice S.S.Subramani (as he then was), giving a contrary view, was brought to the notice of the learned single Judge, to the effect that the guideline value, as maintained by the Sub-Registrar's Office, cannot be accepted for fixing the fair rent and the market value of the property and the value, as per the sale deeds executed at the relevant point of time, alone would have to be taken into consideration.

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6. In view of the above conflicting decisions, Justice K.P.Sivasubramaniam directed the Registry to post the matter before a Larger Bench, after getting orders of the Hon'ble Chief Justice, as the issue is to be decided by a Larger Bench. The relevant portions of the observations made in the reference by Justice K.P.Sivasubramaniam are as follows :

> "2. In this context, I have come across at least two conflicting judgments. In 1995 T.L.N.J.226 (N.SULAIMAN Vs. R.RAVICHANDRAN), Justice M.Srinivasan as he then was), had held that the guideline value adopted by the registering authorities would be acceptable basis for fixing fair rent in the absence of other materials. After referring to the judgment of the Supreme Court reported in 1995 (1) SCC 717, wherein the Supreme Court had held that the valuation register maintained by the municipality could not be relied upon for the purpose of fixing market value under Section 23 (1) of Land Acquisition Act, the learned Judge went further to observe that the judgment could not have any bearing on the present case under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960.
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> 3. Subramani,J. in his judgment reported in 1997 (3) Law Weekly 193 (SRINIVASA GOUNDER V. K.VENKATESAN) had held that the guideline value as maintained by the Sub-Registrar's Office cannot be accepted as correct for the purpose of ascertaining the market value of the property.
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> 4. Therefore, there are two conflicting decisions which require to be resolved. Having regard to the fact that in many Civil Revision Petitions before this Court as well as several similar proceedings before the various Authorities under the Rent Control Act, the same issue arises for consideration, it would be desirable to have the issue resolved at the earliest, by a larger Bench. Therefore, the office is directed to place the papers before My Lord the Honourable the Chief Justice for reference before a Larger Bench."

That is how the matter has been referred to this Full Bench, for deciding the issue in question.

7. Let us now quote the relevant observations from the two conflicting decisions, one reported in 1995 T.L.N.J.226 (N.Sulaiman v. R.Ravichandran), rendered by Justice M.Srinivasan, and the other reported in 1997 (3) LAW WEEKLY 193 (Srinivasa Gounder v. K.Venkatesan), rendered by Justice S.S.Subramani :

(i) In 1995 T.L.N.J.226 (N.Sulaiman v. R.Ravichandran), Justice M.Srinivasan held as under :

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"The first contention urged by learned counsel is that the market value of the site has been erroneously fixed by the Rent Controller and affirmed by the Appellate Authority on the basis of the guideline value adopted by the registering authorities. According to learned counsel, the guideline value should not have been adopted at all. It is contended that the said value is only for the purpose of collecting stamp duty on documents and it cannot be considered to be the market value of the property in question. Reliance is placed on a judgment of the Supreme Court in Land Acquisition Officer, Eluru & Others v. Jasti Rohini and Another (1955 (1) Supreme Court Cases 717). The case is one under the Land Acquisition Act. The Supreme Court held that the basic valuation register maintained by the Municipality on the basis of a notification issued by the Government under Sec.47-A of the Stamp Act could not be relied upon for the purpose of fixing the market value of the land under Sec.23 (1) of the Land Acquisition Act. The judgment cannot have any bearing in the present case where we are concerned with Sec.4 of the Act under which fair rent for the building is fixed."

(ii) In 1997 (3) LAW WEEKLY 193 (Srinivasa Gounder v. K.Venkatesan), Justice S.S.Subramani observed as follows :

"9. A Division Bench of our High Court has also held that for determination of market value for the purpose of fixation of fair rent under the Tamil Nadu Rent Control Act also, the same principle applies. In paragraph 30 of the judgment, reported in 1996-2-L.W.658 (K.Ramanathan (died) and others v. B.K.Nalini Jayanthi), it has been held by the Bench that the evidence must be by examining the persons connected with the sale deed or the transactions. In that case, even though registration copies of sale deeds were produced to determine the market value, their Lordships held that they were not sufficient and persons connected with those transactions have to prove the contents also. I had an occasion to consider a similar case in the decision reported in 1996-2-L.W.637 (Rahmath Fathima, T.H.S. v. T.K.Kader Mohideen), where I held that for determination of the market value, transaction between a willing purchaser and a willing seller will have to be considered, and I also held that the value fixed by the Government for the purpose of stamp duty has no relevance. In paragraph 17 of the judgment, I have said thus :-

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> "....The Government fixes the value only for the purpose of Stamp Duty i.e., for the purpose of its revenue. The value is fixed for the locality and not for a particular survey number. The market value for a particular survey number is the result of a bargain between the parties. That is a matter to be proved by evidence. Judicial notice cannot be taken regarding the value of the property on the basis of a value fixed by the Government."
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> 10. Since the Appellate Authority has relied upon only the hearsay evidence of P.W.1, and that too on the basis of the information ascertained by him from the Sub-Registrar's Office where registers have been kept for the purpose of determining stamp duty, the same cannot be accepted as correct."

8. On a reading of the above observations, it is clear that Justice S.S.Subramani decided the issue in two cases, namely, 1996-2-L.W.637 (Rahmath Fathima, T.H.S. v. T.K.Kader Mohideen) and 1997 (3) LAW WEEKLY 193 (Srinivasa Gounder v. K.Venkatesan), holding, that for determination of market value, transaction between a willing purchaser and a willing seller will have to be considered and the guideline value, which is intended for assessing the stamp duty, has no relevance. These two decisions were rendered by Justice S.S.Subramani, on the strength of the decision of a Division Bench of this Court reported in 1996-2-L.W.658 (K.Ramanathan (died) and others v. B.K.Nalini Jayanthi) and on the decision of the Supreme Court reported in (1996) 3 SCC 124 (U.P.Jal Nigam v. Kalra Properties (P.) Ltd.).

9. Justice M.Srinivasan distinguished the earlier decision of the Supreme Court reported in 1995 (1) Supreme Court Cases 717 (Land Acquisition Officer, Eluru & Others v. Jasti Rohini and Another), stating that the opinion given by the Supreme Court that the value fixed for the purpose of collecting stamp duty cannot be considered to be the market value would not apply to the present case, as the Supreme Court did not deal with the Rent Control Act and, on the other hand, it had dealt with only the Land Acquisition Act. However, the decision reported in 1995 T.L.N.J.226 (N.Sulaiman v. R.Ravichandran), rendered by Justice M.Srinivasan, was not brought to the notice of Justice S.S.Subramani. Thus, there are two conflicting decisions.

10. In the above situation, we have to decide as to whether the guideline value, as contained in the revenue records or the municipal records, or, the market value, as per the sale deeds executed at the relevant point of time, has to be taken into consideration, for fixing the fair rent.

11. Let us now refer to various judgments, relied upon by the learned counsel for the parties :

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(i) In (1994) 4 SUPREME COURT CASES 595 (JAWAJEE NAGNATHAM v. REVENUE DIVISIONAL OFFICER), the Supreme Court held as follows :

> "5. The question, therefore, is whether the Basic Valuation Register is evidence to determine the market value. This Court in Special Land Acquisition Officer v. T.Adhinarayan Setty (AIR 1959 SC 429) in paragraph 9 held that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under Section 4(1). The methods of valuation may be (1) opinion of experts (2) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (3) a number of years purchase of the actual or immediately prospective profits of the lands acquired. Same was the view in Tribeni Devi v. Collector of Ranchi ((1972) 1 SCC 480). It was reiterated in catena of decisions, vide, Periyar and Pareekanni Rubbers Ltd. v. State of Kerala ((1991) 4 SCC 195). Therefore, it is settled law that in determining the market value, the Court has to take into account either one or the other three methods to determine market value of the lands appropriate on the facts of a given case to determine the market value. Generally, the second method of valuation is accepted as the best. The question, therefore, is whether the Basic Valuation Register would form foundation to determine the market value.... It is, therefore, clear that the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration. Equally, it would not be a basis to determine the market value under Section 23 of the Act, of the lands acquired in that area or town or the locality or the taluk etc. Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine market value...."

(ii) In (1995) 1 SUPREME COURT CASES 717 (LAND ACQUISITION OFFICER, ELURU AND OTHERS v. JASTI ROHINI AND ANOTHER), the Supreme Court observed as under :

> "7. The reasonable method to determine the market value of the acquired land is on the evidence of transactions of bona fide sales of acquired land, but

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not on evidence of sales of such land got up having had knowledge of the proposed acquisition, the former would furnish reasonable basis to determine the compensation. In its absence, bona fide sales but not manipulated sales of the lands in the neighbourhood possessed of same or similar quality and having the same or similar advantages would give an unerring assurance to the court to determine just and proper compensation. Such sales must not only be proved but also be bona fide transactions etc. These factors must be established as a fact by examining either the vendor or the vendee. Marking of certified copies of sale deeds are not proof of either the contents or the circumstances in which it came to be executed. Bona fide sale or series of sales or small pieces of land do not furnish the sole basis to determine market value. Bona fide sales may furnish evidence of the market conditions for consideration. Fixation of market value on the basis of the basic valuation register is, therefore, illegal and unsustainable."

(iii) In 1995 (II) CTC 492 (G.LOGANATHAN v. S.CHENNIYA CHETTIAR), this Court held as follows :

"5. The Supreme Court and other Courts, including our High Court, have held that the guideline value is not the market value and it would be dangerous to value the property according to the guideline value because there is no guarantee or truth or correctness of the data given in the guideline value. In Naganatham v. Revenue Divisional Officer, Adilabad (AIR 1983 A.P.155), the Andhra Pradesh High Court has held that the fixation of market value cannot be made on the basis of the value noted in the market value register maintained by the Government and the Court has to take into account the price which a selling (sic willing) purchaser is prepared to pay to a willing vendor. This view has been confirmed by the Supreme Court in the same case, which was later taken before the Supreme Court in Jawajee Naganatham v. Revenue Divisional Officer (1994 (4) S.C.C.595). In a recent case, Land Acquisition Officer v. Jasti Rohini (1995 (1) S.C.C.717), the Supreme Court has observed that valuation register on the basis of the notification under Section 47-A of the Stamp Act is for collection of Revenue and it cannot be the basis for determination of the market value of the land. In this case also, the Supreme Court has observed that the price which the willing seller expects from the willing purchaser is the market price. This Court also in Collector, Nilgiris v. M/s.Mahavir Plantations Pte.Ltd. (AIR 1982

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Madras 138) has held that to adopt figures prepared in the valuation guideline would be dangerous because they offer no guarantee of the truth or correctness of data. The Delhi High Court in Inder Prasad v. Union of India (AIR 1985 Delhi 304) also has repeated the same expression that the price which a willing seller might reasonably expect to obtain from a willing purchaser is the test to determine the market value and it cannot be based on the opinion or information given by the Government. Therefore, from these chain of decisions, it is made clear, that the guideline value cannot be the market value of the property as the guideline value is intended for the collection of the Revenue. As the market value alone is the criteria to value the suit and in this case there is no contra evidence on the defendant's side to show that the property covered under Ex.A.1 is more that (sic than) the value given in the sale deed, as held in Varadarajulu v. Venkatakrishnan (1959) (1) M.L.J. (Notes of cases 9), the valuation given in the sale deed has to be accepted. As a matter of fact, the Supreme Court in Lakshmi Ammal v. Madhavakrishnan (AIR 1978 S.C.1607) would point out that the question of court fee is a peripheral issue and when there is reasonable doubt, benefit must be given to the party, who pleads for the lesser court fee."

(iv) In 1996 (II) CTC 60 (U.P.JAL NIGAM, LUCKNOW v. KALRA PROPERTIES (P) LTD.), the Supreme Court would hold as follows :

"6. The finding of the Court that the concession that the market value determined by the Collector on the basis of basic valuation would be properly applied, is obviously illegal. Shri Gopal Subramaniam contended that the Government of U.P.had issued three different circulars accepting the position that the basic valuation would form basis for determination of the compensation under Section 23 (1) and that, therefore, the High Court was right in accepting the valuation made by the Collector and in directing to pay the compensation on that basis. After the judgment in Nagnatham case, 1994 (4) SCC 595, the Division Bench of the High Court of Allahabad in State of U.P. v. Shau Singh, 1995 (1) H.V.D.191, had held that the rates fixed for the collection of stamp duty cannot be relied upon to determine market value. Therefore, the instructions issued by the Government for determination of the market value on the basis of basic valuation register were held illegal. The Collector, therefore, was obviously wrong in determining the compensation

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under Section 23 (1) on the basis of prevailing rates in 1992 as per basic valuation circulars."

(v) In 2004 SUPREME COURT CASES (CRI) 377 (R.SAI BHARATHI v. J.JAYALALITHA AND OTHERS), the Apex Court, in paragraphs 22 and 24, held as follows :

"22. The guideline value has relevance only in the context of Section 47-A of the Indian Stamp Act (as amended by T.N.Act 24 of 1967) which provides for dealing with instruments of conveyance which are undervalued. The guideline value is a rate fixed by authorities under the Stamp Act for purposes of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty. Thus the guideline value fixed is not final but only a prima facie rate prevailing in an area. It is open to the registering authority as well as the person seeking registration to prove the actual market value of property. The authorities cannot regard the guideline valuation as the last word on the subject of market value. This position is clear in the explanation to Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules,1968. The said Explanation reads as follows :

"Explanation.- The 'guidelines register' supplied to the officers is intended merely to assist them to ascertain prima facie, whether the market value has been truly set forth in the instruments. The entries made therein regarding the value of properties cannot be a substitute for market price. Such entries will not foreclose the enquiry of the Collector under Section 47-A of the Act or fetter the discretion of the authorities concerned to satisfy themselves on the reasonableness or otherwise of the value expressed in the documents."

24. This scheme of the enactment and the Rules contemplate that guideline value will only afford a prima facie basis to ascertain the true or correct market value, undue emphasis on the guideline value without reference to the setting in which it is to be viewed will obscure the issue for consideration. It is clear, therefore, that guideline value is not sacrosanct as urged on behalf of the appellants, but only a factor to be taken note of, if at all available in respect of an area in which the property transferred lies. In any event, therefore, if for the purpose of the Stamp Act guideline value alone is not a factor to

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determine the value of property, its worth will not be any higher in the context of assessing the true market value of properties in question to ascertain whether the transaction has resulted in any offence so as to give a pecuniary advantage to one party or the other."

(vi) In (2005) 12 SUPREME COURT CASES 59 (RANVIR SINGH AND ANOTHER v. UNION OF INDIA), the Supreme Court observed as under :

"31. Furthermore, it is well settled that the sale deeds pertaining to the portion of lands which are subject to acquisition would be the most relevant piece of evidence for assessing the market value of the acquired lands."

12. We have gone through the above judgments, cited by the counsel for the parties.

13. At the outset, it shall be stated that the guideline value, as pointed out by the Supreme Court, is a value determined for the purpose of collecting stamp duty. The Basic Valuation Register is maintained by the revenue authorities, on the basis of the notification issued by the Government under Section 47-A of the Indian Stamp Act. The same is meant to be a guide for collection of revenue and the stamp duty. It is mainly for collection of stamp duty for registration of an instrument. The Notification under Section 47-A, which is meant to be a guide for collection of revenue, cannot form basis for determination of the market value. The Government fixes the value, as indicated above, only for the purpose of stamp duty i.e., for the purpose of its revenue. The value is fixed for the locality and not for a particular survey number. The market value for a particular survey number is the result of a bargain between the parties. On the other hand, as pointed out by the Supreme Court, the market value is the value, as described in the sale deed.

14. The methods of valuation for ascertaining the market value, as suggested in the above decisions, are as follows :

(1) Opinion of experts

(2) The price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages. Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine market value.

(3) A number of years purchase of the actual or immediately prospective profits of the lands acquired.

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15. It is a settled law, as laid down in the judgments referred to above, that in determining the market value, the Court has to take into account either one or the other three methods to determine market value of the lands appropriate on the facts of a given case. According to the Supreme Court, generally, the second method of valuation is accepted, as the best. This method would furnish the evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features, which would enable the Court to determine the market value correctly.

16. In view of the above ratio decidendi fixed by the Supreme Court, the fixation of market value on the basis of guideline value or valuation register, summoned from Sub-Registrar's Office and the Engineer, is illegal and unsustainable.

17. The view expressed by Justice S.S.Subramani, in our view, is correct, as it is in consonance with the principles laid down by the Supreme Court. The other view expressed by Justice Srinivasan is not correct, as the methods suggested by the Supreme Court for fixing the market value would not include the consideration of guideline value and valuation register. So, in our opinion, the said view is wrong.

18. Therefore, our conclusions are as follows :

(1) The guideline value, contained in the Basic Valuation Register, maintained by the Revenue Department or the Municipality for the purpose of collecting stamp duty, has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration.

(2) Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine the market value. In this case, the guideline value alone has been considered, which, in our view, is illegal.

(3) The Rent Controller and the Rent Control Appellate Authority, in the present case, are not right in relying upon the guideline value, maintained by the Revenue Department, for arriving at a fair rent, to be fixed under Section 4 of the Tamil Nadu Buildings (Lease & Rent Control) Act,1960.

19. In view of the above settled position of law and conclusions, both the counsel for the parties would now agree for setting

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aside the orders impugned and for remanding the matter for fixing the fair rent in respect of the property during the relevant point of time to follow the methods as mentioned above, after allowing the parties to adduce evidence.

20. Therefore, it would be appropriate to remand the matter to the Rent Controller, after setting aside the orders impugned, and to allow the parties to adduce evidence, to help the Rent Controller in arriving at the market value, on the basis of the evidence of bona fide sales between the vendor and the vendee of the lands situated near about that land possessing same or similar advantageous features during the relevant point of time; which is, accordingly, ordered.

21. While the reference was made for Larger Bench, the learned single Judge directed the tenant/revision petitioner to pay a sum of Rs.1,500/- per month commencing from the month of April,2000, towards monthly rent directly to the landlord during the pendency of the above revision petition, which shall be adjusted after final adjudication.

22. We make it clear that the said interim order shall continue till the disposal of the matter by the Rent Controller.

23. Since the R.C.O.P.is of the year 1993 and, by now, thirteen years' period has elapsed, the Rent Controller is directed to dispose of the matter within a period of two months from the date of receipt of copy of this order.

24. Civil Revision Petition is disposed of accordingly. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Rent Control Appellate Authority
-cum-Principal Subordinate Judge,
Madurai.

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2.The Rent Controller
-cum-District Munsif,
Madurai.

3.The Section Officer
V R Section,
High Court,
Madras.

+ One cc to Mr M.V.Venkataseshan, Advocate SR No. 17879

+ One cc to Mr V.Sitharanjandas, Advocate SR No. 17620

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